IN THE HIGH COURT OF DELHI

RSA.No.214-15/2005

Sh. Krishan Lal Kalra & Anr. ..... Appellants
! through: Mr. Harish K.Mehra, Advocate

VERSUS

$ LIC ..... Respondent
^ through : Ms. Meghna Sanhila, Advocate

% DATE OF DECISION: 12.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (ORAL)

1. Heard learned counsel for the parties. Following substantial question of law is framed:-

> "Whether in view of non-denial of averments made in para 2 of the plaint by the respondent in it's written statement are the appellants entitled to full benefit under policy No.110762419 dated 15.6.1989?"

2. With consent of parties arguments have been heard today itself. I proceed to judgment.

3. Appellants are the unfortunate parents of Dalip Kalra. It is not in dispute that they had obtained a money back policy No. 110762419 with accident benefit to them pertaining

to their son. According to them Dalip Kalra went missing since 28.6.1992 and could not be traced for 7 years. According to them they lodged a claim under the policy. It was stated that appellant No.1 was the nominee and that appellant No.2 was the Class-I legal heir. In para 2 of the plaint it was specifically averred as under :-

> "2. That the Plaintiff No.1 opened a Life Insurance Policy under the class of assurance of Twenty Five Years Money Back Policy with profits (With Accident Benefit) for his younger son namely DALIP KALRA with the defendant vide policy bearing No.110762419 dated 15.6.1989 and the Plaintiff No.1 has been making regular payments of premium till date. The Plaintiff No.1 has been made a nominee of the insured for the said Insurance Policy."

4. Having successfully established that the whereabouts of their son remained unknown for over 7 years since he was last seen appellants failed to get complete relief in as much as by and under the impugned judgment and decree dated 25.1.2005 learned Appellate Judge has held that there being no material to establish that the appellants had paid premium till date they filed the suit, they would be entitled to be only paid the amount they had paid under the policy.

5. I note that in the decision reported as 2004 10 SCC 131 *LIC Vs. Anuradha* the Hon'ble Supreme Court held that presumption of death pertaining to a person reported missing would be with effect from the expiry of 7 years when he was

last seen and that during the interregnum the policy had to be kept alive by payment of the premium required to be paid.

6. In the instant case, learned Appellate Judge has held that there is no evidence to show that the premium was paid for a period of 7 years after son of the appellants went missing.

7. Learned counsel for the appellants states that no issue pertaining to the dispute whether premium was paid or not was framed for the reason appellant's assertions in para 2 of the plaint were not denied in the written statement filed by the LIC.

8. I have noted hereinabove averments made in para 2 of the plaint. It has to be noted that the appellants made a positive assertion that premium till date has been regularly paid by them. I note that the suit was filed in the month of August, 2001 and the date on which son of the appellants was stated to have gone missing was 28.6.1992. 7 years reckoned thereafter expired on 28.6.1999. Thus, appellants have made sufficient averments pertaining to payment of premium for more than 7 years after 1992.

9. Para 2 of the written statement reads as under :-

> "That the contents of para 2 is a matter of record. Hence needs no comments."

10. Under the circumstances it has to be held that LIC has admitted averments of the appellants that they had been

paying premium continuously till suit was filed.

11. Appellants must have full benefit of decision of the Supreme Court in *Anuradha's* case (supra).

12. At this stage learned counsel for the appellants states that appellant No.1 has expired during pendency of the appeal. Only appellant No.2 is the surviving legal heir.

13. Accordingly, while allowing the appeal and decreeing the suit as prayed for I direct that the decreetal amount would be paid to appellant No.2.

14. Learned counsel for the appellants would file a formal amended memo of parties recording therein that appellant No.1 has died and appellant No.2 is the only legal heir on record.

15. A decree of mandatory injunction is passed against LIC directing LIC to pay the requisite amount to appellant No.1 under policy No. 110762419. The amount would be paid with simple interest @ 6% p.a. from date of suit till date of payment.

16. Cost to follow.

December 12, 2007 **PRADEEP NANDRAJOG, J.**
vg